

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JAMES A. GENCO, III,)	
)	
Plaintiff,)	Civil Action No. 2:21-cv-01518
)	
v.)	Judge David S. Cercone
)	Magistrate Judge Lisa Pupo Lenihan
CHRISTINE LUFFEY, <i>et al</i> ,)	
)	ECF No. 28 & 55
Defendants.)	

MEMORANDUM ORDER

The Complaint in the above captioned case was filed on October 25, 2021 and was referred to United States Magistrate Judge Lisa Pupo Lenihan for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Local Rules of Court 72.C and 72.D.

The Magistrate Judge's Report and Recommendation (ECF No. 55) filed on December 20, 2022, recommended that the Motion to Dismiss the Complaint (ECF No. 28) filed by Defendants Montmeny, Burke, and Humane Animal Rescue of Pittsburgh (HARP) be granted in part and denied in part. Specifically, the Magistrate Judge recommended that: (1) the Motion to Dismiss be granted as to Plaintiff's Pennsylvania common law claims of false imprisonment, conspiracy, and *respondeat superior* liability against Defendants Montmeny, Burke and HARP as set forth respectively in Counts V, VI, and VII, and that those claims be dismissed with prejudice as to these Defendants; and (2) the Motion to Dismiss be denied as to Plaintiff's Section 1983 claims and federal

conspiracy claims against Defendants Montmeny, Burke and HARP as set forth in Counts I, II, III, and IV. The Magistrate Judge further recommended that the Motion to Strike filed by Defendants Montmeny, Burke, and HARP (ECF No. 28) be denied.

Service was made on all counsel of record electronically through CM/ECF. In the Notice of Electronic Filing, the parties were informed that objections to the Report and Recommendation were due by January 3, 2023. No objections have been filed to the Report and Recommendation to date.

After review of the pleadings and documents in the case, together with the Report and Recommendation, the following Order is entered:

AND NOW, this 10th day of January, 2023,

IT IS ORDERED that the Motion to Dismiss the Complaint (ECF No. 28) filed by Defendants Montmeny, Burke, and HARP is **GRANTED IN PART** and **DENIED IN PART** as follows:

the Motion to Dismiss is **GRANTED** as to Plaintiff's Pennsylvania common law claims of false imprisonment, conspiracy, and *respondeat superior* liability against Defendants Montmeny, Burke and HARP set forth respectively in Counts V, VI, and VII, and that those claims are **DISMISSED WITH PREJUDICE** as to these Defendants;

the Motion to Dismiss is **DENIED** as to Plaintiff's Section 1983 claims and federal conspiracy claims against Defendants Montmeny, Burke and HARP set forth in Counts I, II, III, and IV and

IT FURTHER IS ORDERED that the Motion to Strike filed by Defendants Montmeny, Burke, and HARP (ECF No. 28) is **DENIED**.

The Report and Recommendation (ECF No.55) of Magistrate Judge Lenihan dated December 20, 2022 is adopted as the opinion of the Court.

s/David Stewart Cercone
David Stewart Cercone
Senior United States District Judge

Cc: Joel S. Sansone, Esquire
Elizabeth Tuttle, Esquire
Massimo A. Terzigni, Esquire
Krysia Kubiak, Esquire
Michael E. Kennedy, Esquire
Brian L. Shepard, Esquire
John T. Pion, Esquire

(Via CM/ECF Electronic Mail)